



Missouri Department of Natural Resources

Clean Water Commission Water Pollution Control Program

**Meeting by
Conference Call**

January 7, 2004

**Missouri Clean Water Commission Teleconference Meeting
Jefferson Building – DAS Conference Room 11th Floor
Jefferson City, Missouri
January 7, 2004
Minutes**

MINUTES

Present Via Telephone

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission
William A. Easley, Jr., Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission
Janice Schnake Greene, Commissioner, Missouri Clean Water Commission

Present

Stacia Bax, Missouri Department of Natural Resources, Jefferson City, MO
Mary Clark, Missouri Department of Natural Resources, Jefferson City, MO
Ann Crawford, Missouri Department of Natural Resources, Jefferson City, MO
Aimee Davenport, Missouri Department of Natural Resources, Jefferson City, MO
Mohsen Dkhili, Missouri Department of Natural Resources, Jefferson City, MO
Bryan Fawks, Missouri Department of Natural Resources, Jefferson City, MO
Doug Garrett, Missouri Department of Natural Resources, Jefferson City, MO
Peter Goode, Missouri Department of Natural Resources, Jefferson City, MO
Leslie Holloway, Missouri Farm Bureau, Jefferson City, MO
Jim Hull, Missouri Department of Natural Resources, Jefferson City, MO
Malinda King, Missouri Department of Natural Resources, Jefferson City, MO
Kevin Mohammadi, Missouri Department of Natural Resources, Jefferson City, MO
Jim Penfold, Missouri Department of Natural Resources, Jefferson City, MO
Amy Randles, Attorney General's Office, Jefferson City, MO
Candy Schilling, Missouri Department of Natural Resources, Jefferson City, MO
Becky Shannon, Missouri Department of Natural Resources, Jefferson City, MO
Scott B. Totten, Missouri Department of Natural Resources, Jefferson City, MO

Chairman Herrmann called the meeting to order at approximately 9:10 a.m. and asked one of the Commissioners to read the motion for closed session.

Commissioner Perry commented that before the Commission went into closed session she suggested that on future calls of this nature that the closed session be held at the end of the call

so the public that wish to participate in the open meeting do not have to spend their time waiting for the Commission to do closed session.

Commissioner Minton **moved that the Clean Water Commission go into closed session** to discuss legal, confidential, and privileged matters under section 1, 610.021, personnel actions under section 610.021 personnel records or applications under 610.021 and records under section 610.021 which are otherwise protected from disclosure by law. Commissioner Greene seconded the motion, Commissioners Easley, Greene, Kelly, and Herrmann voted yes and Commissioner Perry voted no. Majority vote passed to go into closed session.

Commissioner Minton **moved to come out of closed session** and go back into open session. Commissioner Perry seconded the motion; and was unanimously passed.

Back into Open Session at approximately 11:00 a.m.

Missouri Coalition for Environment Lawsuit Against EPA

Mr. Jim Hull, Director of the Water Protection Program stated that there is an item that wasn't included on the agenda and proposed to add an agenda item to bring the commission up to date on the Coalition for the Environment's lawsuit against EPA concerning Missouri's water quality standards. He wanted to talk specifically about several issues that are included in the lawsuit and receive direction from the commission on how staff should address them. He then asked Amy Randles, Assistant Attorney General, if she wanted to add a quick update as part of this discussion. He also asked Becky Shannon, Chief of the Water Protection Program's Watershed Protection Section, to go through the major issues in order to receive direction from the commission on how to proceed in addressing those items.

Ms. Randles reported that apparently EPA will be meeting with the Coalition next week to discuss opportunities for settling that lawsuit and in connection with that EPA has requested that the commission provide some timeframes for perhaps moving forward with some of the issues that are raised in the Coalitions lawsuit. She thought that these had already been discussed at the last meeting, but that there are apparently four additional items that they would like some time frames on. She asked Ms. Shannon to discuss those.

Ms. Shannon reported that in the Coalition for the Environment's lawsuit they make 16 claims regarding actions that need to be taken on Missouri Water Quality Standards. She briefly went through those claims in categories and identified the ones not previously discussed with the commission and for which guidance is requested regarding how to proceed. The first group of issues are the items that were disapproved by EPA. There are eight items in this category. The one dealing with wetlands has not been discussed with the commission. The staff has not developed language to address this issue. It has not been addressed because EPA has said that

they no longer consider it a disapproved item. However, in the context of this lawsuit with the Coalition for the Environment it is an item the Coalition has brought up and they still consider it an issue. Ms. Shannon requested guidance on the issue of wetlands, indicating that in EPA's letter, they felt that a change made in 1993 to the water quality standards was less protective of the previous language. Ms. Shannon said that her understanding is the potential action needed is to change the rule to be consistent with what EPA recommended in their letter of September 2000. Of the eight disapproved items, the wetlands issue is the only one where commission guidance is needed.

The next two items are those that the EPA found to be inconsistent with the Clean Water Act. The first one has to do with outstanding national resource waters. This has already been discussed with the commission and plans are to address this in a draft rulemaking that is proceeding. The second item, Whole Body Contact Recreation, is an issue that direction from the commission is needed on how to proceed. Of the ten items that are disapproved or inconsistent, direction is needed on Wetlands and on Whole Body Contact Recreation. Ms. Shannon explained that there are three options that the commission could take on Whole Body Contact Recreation. One is that the commission could take no action and allow EPA to promulgate this. Two, the commission could direct staff to designate all waters in the current rulemaking. Or, three, the commission could direct some other kind of scheme for designation of waters involving prioritization. Ms. Shannon felt that there is an opportunity to include an implementation schedule for those facilities that might be impacted to allow them time to come into compliance if they do have to disinfect, also to allow time for development of the use attainability analysis if they choose to pursue that course of action.

The remaining six items in the lawsuit all fell under the category in EPA's letter as items that they said needed attention during the next triennial review. Of those six items, the commission had already instructed the staff to move forward with the rulemaking on two of them, so language has been drafted and is ready to go. There are four remaining items. The first one is antidegradation implementation procedures. EPA had indicated that the department needs to have implementation procedures for the antidegradation policy. The department's policy exists in rule, but the lawsuit contends that implementation procedures are needed. The second item in this group has to do with fishable, swimmable, protection for unclassified waters. The Coalition is contending that unclassified waters should be protected with Whole Body Contact use designation. The third item has to do with mixing zones. On this item EPA has concern that a provision in Missouri standards that allows a mixing zone for streams with a very low flow, that is .1 cubic feet per second or less, is not appropriate. They have suggested removing that. Direction is needed from the commission on whether or not to remove the mixing zones provision. Ms. Shannon didn't think there would be a substantial impact from that removal but this has not previously been discussed with the commission and staff did not have direction. The last item has to do with high-flow exemption. Currently Missouri's water quality standards allow an exemption from the in-stream bacterial standards for periods of high flow. EPA has indicated that they believe Missouri's exemption is too broad. Two options have been discussed.

One would be to remove the exemption completely; the other option would be to quantify the exemption in some way. Discussion has centered around using a 25-year, 24-hour storm event or catastrophic storm event. In other words, the rule contains a quantifier for when the exemption would be in effect. EPA has informally expressed some concern with that approach but there has been no formal communication to Ms. Shannon's knowledge. Ms. Shannon summarized that the following are areas where staff are asking for direction: #1, Wetlands, how the department or how the staff should address the wetlands issue in the water quality standards; #2, Whole Body Contact Recreational Use Designation, how staff should address that in a proposed rule; #3, Antidegradation Implementation Procedures; #4, whether unclassified waters should be protected as swimmable, that is the use of Whole Body Contact Recreation applied to them; #5, mixing zones on streams with .1 cubic feet per second or less; and #6 the issue of high-flow exemption, how we should proceed with that.

Ms. Randles asked Ms. Shannon to explain to the commissioners which of the four issues that EPA has requested specifically that the commission consider and develop some time frames on.

Ms. Shannon said it is the department's understanding from EPA that there are four items of those six just mentioned, that are of particular interest to the Coalition of the Environment as part of the lawsuit discussions. Those include Whole Body Contact Use Designation, Antidegradation, High-Flow Exemption, and Wetlands.

Commissioner Herrmann said they should take those individually.

Commissioner Minton agreed. He thought it would be easier because each issue is very contentious to the Coalition and they are very complex and complicated issues. He didn't feel he had a total grasp of what should be done on each one of them and would be beneficial to address each singularly.

Commissioner Herrmann asked if Whole Body Contact should be first.

Commissioner Minton agreed. He felt that all the commissioners should express how they feel on each issue. His first thought, just interpretation of the position and from listening to legal advice and conversations from the last commission meeting and in previous commission meetings, was that some sort of a positive action to try to work out a resolution on the Whole Body Contact is needed. He felt that while the department had entered in to a memorandum of understanding with EPA, that apparently is not going to satisfy the Coalition in the lawsuit. He thought that a process was needed to designate the streams of the state on a priority basis and thought it should be done immediately. He thought staff should give the Environmental Protection Agency something to work with in the negotiations with the Coalition. He felt that option number three is the only possible one that will address the concerns of all the stakeholders. He thought it would give the environmental working group, or Coalition, if they are open to resolving the issue outside of court, a good feeling about the commission's direction.

He added that use attainability studies should be done on as many streams as possible and as fast as possible, immediately designate those streams that would obviously fall into the Whole Body Contact issue, and proceed with the rule.

Commissioner Herrmann said he thought the recommendation was to designate the Class P streams and lakes as whole body and then proceed with the use attainability analysis procedure for the remaining streams.

Commissioner Perry asked if she understood that the commission was going to apply effluent standards at the pipe end rather than include mixing in that.

Commissioner Herrmann answered that no, that would be a part of the use attainability analysis as to what effect the discharge has on the stream as a total body not at the end of pipe.

Ms. Shannon explained that what staff would envision is an in-stream water quality standard and then, as appropriate, develop also an end-of-pipe effluent limit so that facilities know what their effluent limit should be when they are obtaining a permit. The effluent limit at the end of pipe is typically less stringent than the in-stream standard but the effluent pipe limit has to be set so that the in-stream standard is met. She asked if that clarified that issue for Commissioner Perry.

Commissioner Perry said it did.

Mr. Hull mentioned Commissioner Herrmann's thought about designate all Class P streams and lakes immediately and allow for studies to be done on other classified streams in order to determine whether or not they need to be added to that list may need to be clarified.

Commissioner Herrmann asked if he was correct in that as a part of the rulemaking it was proposed to establish procedures for the use attainability analysis.

Ms. Shannon answered that staff is working on finalizing procedures for that process.

Commissioner Herrmann asked if that would allow reclassifying Class P streams later and would also be a procedure for considering Class P streams and unclassified streams.

Ms. Shannon explained that there are two separate procedures being discussed. One is the stream evaluation guidelines that were discussed at the last commission meeting and those would do exactly what as Chairman Herrmann described. The other is a document called a use attainability analysis, a UAA, and that language is still in the process. That would be the process by which someone would request removal of a use from a stream.

Commissioner Herrmann thought that was a part of the motion that is being discussed but has not yet been made. He asked if that was correct.

Commissioner Minton thought so. He said this is just all part of the discussion of what they need to do. They can then ask legal counsel and staff both if this is enough direction and guidance to know where they are headed and if this is the best case scenario or what does legal advice think on best case. He asked if EPA had enough information to work with in the discussion with the Coalition next week.

Ms. Randles said it is really a guessing game as to what would be enough. She said the commission obviously has the option of designating everything in the state classified and unclassified. The feeling from EPA is that the classified waters is what the Coalition is focusing on because one of their six issues, as Ms. Shannon explained earlier, was unclassified streams. That was not identified as one of their priorities so probably their universe could be limited to classified streams at least initially, but that is just a guess from reading between the lines. She didn't know if it would satisfy them. She asked if the commission was talking about the possibility of going forward with the rulemaking to immediately designate Class P streams and lakes. Then on the remainder of classified streams in the state that a different date for designating those would be made unless a UAA has been done at some date in the future or after a year period or two or three or five. She asked what the commission was contemplating on that. Without knowing that part, she felt it may be hard to get a sense of how likely it is to meet EPA's request.

Commissioner Herrmann thought that if the UAA is a part of the immediate procedure then the rest of the streams can be evaluated on the sequential basis or whatever time that they could be evaluated.

Mr. Hull wanted to be sure all understood what was being discussed. He explained that the UAA, Use Attainability Analysis, is not something that the department would use; it would be something that a facility or other entity would use to submit to the department in order to justify removing that designated use from a stream that they discharged into, one of those Class P stream or lakes that you are thus far thinking about directing us to classify immediately.

Commissioner Herrmann asked why the department isn't doing it. He said if discussion is about an exemption from Whole Body Contact, which is a state requirement, then the department should be doing it not the individual facility. He thought that considerably varying results would be received from every one of the facilities up and down a stream.

Ms. Randles explained that this would be a standard procedure and either staff could do it or members of the public could do it and have staff review it but there would be a set of procedures. She asked if she was correct in her understanding.

Mr. Hull said they are talking about a resources issue. He was wondering about being able to follow through with the remainder of the designations within whatever time frame that is given

here not knowing how many other classified streams that would need to be looked at to determine whether or not to place them on the list at a later date or not and what that date would be. He realized that Ms. Randles was suggesting to have a time frame so EPA will know by what date that a decision would be made on adding the remainder of the classified streams other than Class P streams or the lakes but was worried about impact on being able to follow through and do what's being directed. In response to Commissioner Herrmann's thought that it really should be staff's responsibility to determine whether or not that usage was correct, Mr. Hull indicated he did not really feel it was possible.

Commissioner Herrmann thought this was the same as with the TMDLs. He commented that if the facilities are doing it in lieu of the state, the public sees the department as letting facilities report their discharges, report their analysis and are getting by with whatever they can because they are doing their own analysis.

Ms. Shannon said that is a good point. The envisioned procedure is that the facility or individual that is asking for the use to be removed would provide that documentation to the department using the procedures that are being developed. The department would review it and accept it, go through a rulemaking and EPA would also have to review and accept it. So, there would be a more formal review and acceptance process than the scenario of self-reporting that Chairman Herrmann described. The facility would prepare the information initially but there would be the approval process and the commission would be involved during the rulemaking.

Commission Perry asked if two separate procedures were being discussed here. She asked if they were talking about a procedure by which the Class P streams and lakes would be put on a list and then a procedure determining which of the remaining waters would go on the list. And then there is the Use Attainability procedure, which is used by facilities that are already on a list that want to be exempted off it.

Mr. Hull said that more than one thing is being discussed. If the commission directs staff to immediately go through a rulemaking to designate Class P streams and lakes as Whole Body Contact, there is no procedure to go through. It just would be done. The determination of whether or not the remainder of the classified streams need to be on the list or not through some kind of study is where direction is needed. He said other than that the MOA process is being discussed. The UAA is done after the stream is designated. The UAA would be the procedure facilities would use to request that stream to be removed from that list which is entirely different.

Commissioner Minton agreed and asked if he was correct in that the UAA is a responsibility that will likely fall on the shoulders of the public at large who want it removed because of the limited staff time available to go back through and start de-listing.

Mr. Hull stated that was correct.

Commissioner Perry asked if staff would develop the procedure.

Ms. Shannon replied that is right and the exception would be that if staff are out evaluating a stream for some other reason and gather data incidental to their other work, that data would be used to the extent possible.

In answer Commissioner Herrmann's question, Ms. Shannon replied that there was not a procedure by which the staff would follow to consider Whole Body Contact for Class P streams.

Commissioner Herrmann asked if that could be developed and incorporated into this.

Ms. Shannon replied that no, the presumption is that the procedure is to remove the use to document whether the use could be attained.

Commissioner Herrmann said he was not talking about the UAA now but about the procedure to include them or exclude them. He thought she was talking about the urban analysis.

Ms. Shannon said she could see his point. She said they have talked about some criteria to use on the obvious waters that need to be designated but not for the purposes of identifying which goes on, which comes off.

Commissioner Minton said to finish his question, how will the information be provided and what will be the time frame to satisfy the Coalition, EPA, the public and the regulated community for those obvious waters. If there will be a formal procedure for determining that who will be responsible for going out and doing an analysis to get them there. He thought that was the question that Mr. Hull was responding to about the concern of staff ability or the time frame by which to do that. He asked that Mr. Hull address that issue.

Mr. Hull said there are two concerns. If staff needs to determine, other than the Class P streams and lakes, which other streams need to be designated for Whole Body Contact, he was worried that the resources would not be available to do that in a time frame that would be acceptable for the Coalition for the Environment and EPA to be able to reach some settlement. If the commission directs staff to not add those other classified streams now, but to start in a year then Mr. Hull didn't think it would happen. He couldn't even guess as to how many years it might take but it would certainly take a longer time frame than the Coalition would be willing to accept.

Commissioner Minton asked how the numbers were determined in the memorandum of understanding that the department had with EPA and how was it anticipated to collect that data to include those streams.

Mr. Hull said there wasn't a whole lot of information but it was determined in a scientific way. He would allow Ms. Shannon to explain.

Ms. Shannon said in regard to the process, staff were anticipating to rely almost wholly on partners who are providing information regarding streams. If that information wasn't available then there was a default at the end that said, if by this date the information isn't received, then all streams are designated for Whole Body Contact. Other states have been contacted about what kind of quick and easy evaluation they might use but nothing has been developed that EPA approves at this point. Staff envisioned a very basic evaluation that would be done by resource partners that are already out in the field.

Commissioner Minton felt that even though the commission would like to do this in a systematic and orderly fashion, with the most amount of credibility and the least amount of controversy, they have to keep in mind that if this thing does go to court or if it's taken to the judicial process they will not prevail. All the streams in the state would automatically be designated as Whole Body Contact. He thought EPA needed as much as working room and latitude as possible in their discussions with the Coalition. He said he would just ask staff for discussion on how to best address the issue and what would they do.

Jim Hull said this is getting into a complicated discussion.

Commissioner Minton stated staff are looking for complicated direction too.

Mr. Hull said that as complicated as it is, the commission might want to look at another option of designating them all immediately with a delayed compliance date for facilities that was somewhat reasonable. Then UAAs could be preformed to get off the list. Mr. Hull didn't have a recommended answer right now for what staff could provide, the direction to take, or what time frame that could be met to go through the remainder of the classified streams other than Class P streams and lakes that weren't already classified as Whole Body Contact to determine whether or not staff would recommend to the commission placing them in rule as far as designating their use for Whole Body Contact. It would have to be in a time frame that could be done and be acceptable to the Coalition and thwart the lawsuit from going forward and EPA designating them all.

Ms. Randles said another option to consider, which might be acceptable, is a variation of what has been discussed. That would be to have a later date for a designation of the remaining non-Class P and the non-lake streams, which would simply allow more time for private parties to do UAAs on those streams. The Coalition might look at it as a settlement possibility because it would have automatic designation of all classified streams within a certain period of time with priority streams first. Knowing that prioritization was something that the Coalition was open to, she asked Ms. Shannon if the department's prioritization list would also satisfy the Coalition.

Ms. Shannon stated she didn't know if it would satisfy them but that it's the most practical and easy thing to do. Staff has discussed with stakeholders prioritizing based on risk and that would include exposure, high recreational use in streams in urban areas, but that is it.

Commissioner Minton asked what the next priority classification would be after Class P.

Ms. Shannon said next would be Class C, which have a very low flow, and also wetlands.

Commissioner Minton asked if the Class C waters could be designated as incidental contacts, as opposed to Whole Body Contact, and have a set of standards for those.

Ms. Shannon thought this option could be explored but would take some time.

Commissioner Minton said that since the commission are going to promulgate this by rule and since the whole thing is going to take time anyway why not promulgate by rule all classified Class P lakes and streams as Whole Body Contact streams immediately; then classify all the rest as incidental contact with evaluation to be determined in standards set on incidental contact streams and have that part a separate rulemaking process. That way all of the streams in the state are covered.

Commissioner Herrmann ask Ms. Shannon if the task of defining those streams that are in urban areas has been completed.

Ms. Shannon stated there needs to be a good workable definition for what the cutoff of an urban area should be, for example would it be a population density, a community size, or a population density greater than X or greater than Y. Data is available regarding streams and population densities, streams and community size, but what should the cutoff be is not defined.

Commissioner Herrmann was looking at legality and wondered if an arbitrary decision could be made and include those urban streams which might be designated as being probable of contact with human bodies and leave the others off of the list. Some of these streams that run through the pastures up there in north Missouri have very, very little Whole Body Contact possibility.

Commissioner Minton requested to go back to his point on Whole Body Contact because at some point the Wetlands and Antidegradation still need to be discussed. He asked what the commissioner's favored. It has to be workable for staff, workable for the regulated community and still satisfy the Coalition.

Commissioner Greene suggested starting with the Class P streams and the lakes on Whole Body Contact saying these can be done immediately and that procedures are being developed for the others. She suggested not giving a timeline on the other part yet, just starting the negotiation process and see if it's accepted. There just needs to be a starting point for discussion.

Commissioner Minton concurred but with one exception. He felt the commission needed to get more specific information for EPA to use before the judge determined to designate all waters as Whole Body Contact.

Commissioner Greene agreed but a decision would need to be made quickly as the meeting is next week. She felt that they needed to decide specifically what could be done for this rulemaking then fix it during the comment period.

Ms. Randles has the understanding that what EPA has requested is time frames. Before any settlement discussions begin, the Coalition for the Environment is requesting that the commission provide a complete package with time frames for all classified waters. She didn't think that necessarily meant that the time frames couldn't change during a rulemaking process or that a different time frame couldn't be worked out if there are some settlement discussions down the road. This was being brought to the commission's attention because this is sort of the last window of opportunity to try to get the Coalition to sit down and work something out.

Commissioner Minton suggested to begin immediate rulemaking on designating Whole Body Contact in all Class P streams and lakes, including all the issues that Ms. Shannon brought up. Once the rules have been promulgated for those classifications of streams, which would be whatever date that is, then begin the immediate process for classification of all of the streams in the state either for Whole Body Contact Use or Incidental Contact. That would give the time frame then to determine what incidental contact are and what those standards would be. He stressed the important of having something to give the Coalition and EPA.

Ms. Shannon wasn't sure if the Coalition would accept it without the Class C streams being included and asked what would happen if the Coalition says no.

Commissioner Minton asked if the Class C streams could be called Incidental Contact streams.

Ms. Shannon stated her staff says no.

Commissioner Minton asked why.

Ms. Stacia Bax of the Water Protection Program's Water Quality Monitoring and Assessment Section stated that the fishable, swimmable goal is something the Clean Water Act says specifically and Whole Body Contact is swimmable. To get any less than that you would have to do a UAA to establish a tiered use to get a secondary contact. She didn't believe an automatic secondary could be done.

Ms. Randles stated that staff is asking to give them direction on what kind of a rule to put together and get on file. The filing wouldn't occur until mid-year and after it occurs changes could be made to it. She thought the reason staff was coming to the commission and asking for a

proposal was to try to meet this sort of precondition for settlement negotiations of presenting a complete package on all the issues that the Coalition has expressed a strong interest in. The Coalition has expressed a strong interest in all classified waters and have also commented on the time frame proposed for many other things that staff already plans to include in July. Their comment has been that proposing a rule in July and then publishing a final rule next January is longer than the Coalition wants to see. She felt the Coalition is expecting everything to be included with specific time frames even if they don't like the time frames.

Commissioner Herrmann wondered if it has been explained to the Coalition the time frame on getting a rule completed.

Mr. Hull felt they knew that EPA's rulemaking process was faster. He envisioned between now and the beginning of next week, either formally or informally, sending EPA the direction that the department is headed on these major items so they can enter into those discussions with the Coalition. It's not just working on a rule but conveying the department's position on these to EPA to help them in their settlement discussions with the Coalition.

Ms. Aimee Davenport, Legal Counsel for the Water Protection & Soil Conservation Division, said the question that still remained in her mind was that EPA will probably ask between now or next week if the Coalition is not satisfied with the designation of the Class P streams, is the department or the commission willing to add onto that classification immediately. She asked if the commission would be willing to add onto the immediate designation of waters.

Commissioner Herrmann answered that they would but with some justification.

Commissioner Greene added with some procedure. Actually, she said, they haven't got a choice.

Mr. Hull agreed, but if the choice made is not acceptable to the Coalition or EPA then they are going to go do this.

Ms. Randles said that this is an opportunity to give some direction to staff to proceed with something that would create an opportunity for settlement discussions in which maybe longer time frames could be worked out. She was concerned that if the Coalition doesn't have some things on the table that they want, they will just say forget it and EPA will do the same thing. Then everything will have to be designated anyway if EPA just gives up.

Commissioner Minton asked what if the commission gives staff direction to designate all the Class P lakes and streams as Whole Body Contact streams. Staff could use that as one of the conditions. Secondly, he asked if anyone was opposed to continuing with the promulgation rule, immediate promulgation rule to address the classifications of all the rest of the streams as Whole Body Contact streams, with a criteria established for that designation. In answer to Ms. Davenport's question, if just Class P streams don't satisfy the Coalition, the issue is how much

more could be given. He asked what language could be given to EPA to buy time to do this in a timely manner and with the condition of having some sort of a procedure.

Commissioner Greene agreed that procedures are needed for determining them.

Commissioner Minton also agreed.

Commissioner Herrmann stated that there could be a procedure for designating the Class C streams.

Mr. Hull said that if the commission is saying to go ahead and designate immediately all Class P streams and a delayed designation date for the remainder of the Class C streams with a future date when that would be done based upon some sort of analysis by staff on whether or not it deserves to be designated as Whole Body Contact, he didn't think it would be acceptable.

Ms. Randles asked Mr. Hull if it would be feasible if the commission were to immediately designate those, however, delay the effective date of the designation for a certain period of time. She said perhaps just say they will be designated one year after the rule takes effect or one year later than the Class P and lakes are designated and that will give the public more time to do UAAs on those other classified streams. And, since they are lower priority presumably the Coalition and EPA wouldn't care, which would give those people more time to do those.

Commissioner Herrmann said to say that the analysis would be done in one year on a Class C.

Commissioner Perry liked the idea of one year from the implementation of the rule. The extra time could be used to get some more rules out. She asked if a motion could be made.

Commission Minton first asked Mr. Hull what he thought of this.

Mr. Hull explained that they were talking about on the remainder of the Class C streams that the designation date would be delayed by approximately a year with the department in that year deciding whether or not, through some kind of study, they did not need to be classified as Whole Body Contact and then remove them through a later rulemaking or that UAAs would be done by entities that would be on those streams and that would be submitted for review and approval to decide whether or not they needed to be removed from the list later.

Commissioner Herrmann said that or a combination of the two but to not put those Class C streams on the list now so they don't have to be removed.

Mr. Hull asked if they are not talking about designating them all immediately. They would go on the list a year after the effective date of the rule unless the department or someone did a study to determine whether or not it is Whole Body Contact or not.

Commissioner Herrmann replied yes, but not including the whole lump to one year but sequentially through the year as it might be determined that some should and some should not.

Ms. Shannon asked if they were saying the rule language should say that one year from the effective date of this rule Class C streams would be designated for Whole Body Contact. Then during that year, people would have an opportunity to do an analysis, whether it's the department or the individual citizen or the public entity. If they wanted to remove that use they could provide the documentation in that year and then take it off through another rulemaking.

Commissioner Herrmann added that the department could establish some basic criteria.

Ms. Shannon said that would be a staff procedure but that it would not be included in the rule.

Commissioner Herrmann said that would be part of the evaluation during this subsequent year.

Commissioner Minton asked how practical that would be.

Ms. Shannon said the possibility that staff would not be able to do any analysis during that year would need considered and that at the end of that year only those waters where people had done the analysis and sent it in would be able to have the use removed.

Commissioner Minton asked about the possibility of using wording to say that the process of promulgating by rule could start for all Class C streams for Whole Body Contact. Then if they are promulgated by rule, that would take another year, which gives more time to do the UAAs on anyone who wants to get it done. But, a precise time frame has been given for when the Class C streams designation would start.

Ms. Randles commented that she would have some doubts about whether that's the kind of time commitment the Coalition or EPA cares about because starting a rulemaking doesn't mean anything. She explained that the direction the commission gives staff is only going to have force of law if it goes through a rulemaking process and a promulgating of a final rule. That would be the down side of putting a date out there to start this process even if it's questionable of whether it can realistically be done. The purpose of this discussion is to give staff something they can put into a form of a rule by the end of the month and it can be used to encourage the settlement discussions in the Coalition suit.

Commissioner Minton suggested they go back to Ms. Shannon's original thought then.

Commissioner Herrmann asked about utilizing other available resources to assist with all of these evaluations, for example, the conservation commission and the geological survey does considerable sampling and measuring on a lot of streams as well as Steam Teams.

Ms. Shannon could envision utilizing that information but staff would still need to review everything, evaluate everything and put it all together.

Commissioner Herrmann stated that if a time frame of a year or something like would be established that all possible resources should be utilized.

Ms. Shannon agreed.

Mr. Kevin Mohammadi from the Water Protection Program's Enforcement Section, said that one suggestion would be that all waters of the state would be classified as Whole Body Contact but the effective date will be incremental. Class P and lakes would be by January 2005 and for example, Class C and unclassified would be whatever date the commission chooses, maybe 2006, so that way everything is Whole Body Contact but there is an incremental date for effective date of rules that stays away from promulgation dates.

Ms. Randles thought that might have some symbolic importance for the Coalition that everything is being designated up front but it's just the effective date that is delayed. She didn't know how much it would matter to them.

Ms. Shannon thought that a very reasonable suggestion. One of the challenges would be if the rulemaking is late. It cannot legally become effective until the effective date of the rule. So, for instance, if it was January 2005 and the effective date of the rule ends up being for whatever reason July 2005, this would be a conflict.

Mr. Mohammadi understood but said that this could be a direction from the commission and logistic difficulties could be included to address that.

Ms. Randles said that basically two separate rules are being discussed. One for Class P streams and lakes which would take effect on one date and a different rule for the remaining classified waters, which would take effect on a different date presumably a year later then the effective date of your first rule.

Ms. Shannon said she would think of it as two separate items within one rule with different effective dates.

In answer to Mr. Hull's question Ms. Shannon said a delayed effective date for any classified streams other than Class P is what's being talked about.

Commissioner Perry said she had to leave but left her phone number if she was needed for a vote. So far she agreed with the direction of the conversation.

Mr. Hull asked a clarifying question. On the designation of all Class P streams and lakes immediately upon the effective date of the rule, if there is any thought towards a delayed effective date for facilities that discharge into those streams being talked about for designating all Class P streams and lakes immediately as Whole Body Contact and designating those streams other than those that are Class C streams a year later. When talking about delayed implementation dates, he wasn't clear if it was delayed compliance dates for facilities that discharge into the streams or if it was a delayed effective date on their being designated as Whole Body Contact.

Commissioner Minton said he was actually thinking in terms of a designation.

Ms. Randles said that basically the idea would be that that would give more time for people to do UAAs on those streams that are not Class P and are not lakes.

Mr. Hull said one of his concerns is whichever ones are designated that there should be a window of time that facilities that discharge into those streams will be able to come into compliance.

Commissioner Minton asked if that needed to be included in this discussion or if it was part of the rule.

Ms. Shannon replied that it's part of the rule. She asked if anyone would have any objection to trying to do an implementation schedule like that.

Commissioner Minton felt an implementation schedule like that would have to be done.

Mr. Hull just wanted to make sure that all understood each other.

Bryan Fawks, Deputy Division Director of the Water Protection & Soil Conservation Division asked if the commission was recommending to designate all.

Commissioner Herrmann said yes, but the designation doesn't mean that tomorrow somebody has to install disinfection equipment.

Mr. Hull asked Commissioner Minton to repeat what is being proposed so that all understand what is being talking about.

Commissioner Minton first asked what would be wrong with doing an incremental determination for all those streams other than Class P a year after the date as Mr. Mohammadi suggested.

Commissioner Minton stated that Mr. Mohammadi's suggestion was to establish a time frame for the designation of all other streams other than P and C on an incremental time frame starting approximately one year after the rule.

Commissioner Herrmann stated that the designation, redesignation, reclassification of those streams still has to be done by rule.

Commissioner Minton replied that it would.

Mr. Hull stated they have to be designated by rule and they have to be taken off by rule.

Commissioner Herrmann replied that that is correct.

Mr. Mohammadi said that if that is the direction the commission wants to give, the logistic difficulty that Ms. Shannon raised can be worked out. The rule will have to be updated because this will change the effective date of the rules.

Ms. Shannon said that if the commission directed, Class P streams and lakes could be designated on the effective date of this rule. Class C streams would be designated one year from the effective date of this rule without specifying a date.

Commissioner Herrmann asked if it would be legal to say the commission would designate the streams to be classified or to be designated in the original rule within one year. He thought it still had to be done by rule by designated stream.

The way Ms. Randles looked at it, she thought this may be a reason for actually doing the different set of classified streams in two different rules because the Class P streams and lakes could have the immediate designation, including procedures for doing a UAA and submitting them to the state, but it would take another rulemaking to get them off the list. If the Class C streams were done as a separate rule, the proposed rule would go forward in July 2004 with plans to finalize the rulemaking in January 2006. This might allow having a UAA procedure applicable in the Class P streams and lakes rule on all of the classified waters in the state. This could then be approved before the rulemaking became effective.

Commissioner Herrmann stated that concurred with his point that it has to be designated by stream in a rule at a future date.

Ms. Randles replied yes and then also removed in a rule.

Ms. Shannon said that the example she gave would actually be designated in rule. The Class P streams are listed in rule, which is saying that all of those streams would become designated on a given date.

Commissioner Herrmann replied that he was talking about the Class C streams now. No difficulty with the Class P's and the lakes.

Ms. Shannon said that the Class C's are there as well.

Commissioner Herrmann replied but not by name.

Ms. Shannon said the unclassified streams are not there by name but the Class C streams are identified in the rule.

Commissioner Herrmann said they are identified in Table H of the regulations and to change that to either include or exclude Whole Body Contact has to be done by rule by name.

Ms. Shannon replied that is correct. The example she gave would be doing that by rule but would be including all Class C streams one year from the effective date of the rule. A different rule would be needed for removing the use and could be done during that year.

Ms. Randles wanted all to keep in mind that the simplest thing to do and probably the surest way to accomplish the goal of getting the Coalition to sit down and talk and work out alternate time frames is to just designate all streams. The commission could direct staff to do a rulemaking that would designate all classified waters, but keep in mind that that rulemaking could go forward but could be withdrawn after proposing it. It wouldn't take effect unless and until the commission voted to actually publish a final rule and that would take place months from now. A lot of negotiation could occur not only with the Coalition but with all the stakeholders between now and then. Ms. Randles felt this would ensure opportunity for settlement and get direction to staff on something they can get on file and have done by the end of this month.

Commissioner Minton felt that was going to be the commission's decision and even go further and say these would all be Whole Body Contact Streams.

Ms. Randles apologized that she may have misunderstood and missed out on part of the discussion.

Commissioner Minton asked if she said all waters, C and unclassified.

Ms. Randles replied that she said all classified.

Commissioner Minton thought that was what was being attempted and in addition designate all lakes and Class P streams into Whole Body Contact streams.

Ms. Randles thought there was some confusion. She explained that Class P and lakes are just two sets of classified waters. She reiterated that the surest way to get the Coalition to the table to work out some alternate time frames is to say that a rulemaking will be done to designate all classified streams.

Ms. Shannon said wetlands wouldn't be included.

Ms. Randles said the goal is to get them to the table and if a large segment of the state's streams are not included, your goal cannot be reached.

Commissioner Minton thought those were included in the discussions.

Ms. Randles stated she was talking about no delayed implementation.

Mr. Hull said there would be a delayed implementation date for facilities that are discharging into those streams and a delayed compliance date.

Mr. Fawks said there would be no delayed implementation and no delay of designation.

Ms. Randles said there would be no delay of designation but asked if they wouldn't have to comply with a standard until the next time their permit comes up for renewal.

Ms. Shannon replied that the facilities wouldn't have to comply with the standard immediately. It would be done as part of their permit review and with the offer of a compliance schedule, if needed.

Commissioner Herrmann asked what about the streams there are no dischargers other than agricultural.

Ms. Randles said there would be immediate designation.

Mr. Hull stated they could do a UAA and get off if they want to.

Ms. Shannon stated there wouldn't be any regulatory implication. There wouldn't be anybody who is being required to take specific action to disinfect on those streams.

Ms. Randles stated that it would be a matter of doing sampling to prove that someone is violating the water quality standards. If the commission gave staff this direction, they could draft the rule that way, go through the process and get it on file but it wouldn't take effect unless and until approval of a final rule after public comment.

Commissioner Herrmann said his interpretation of the negotiations has always been give and take. He stated he would be willing to compromise to the point of admitting Class P streams and maybe some of the Class C's but not all of them.

Ms. Randles thought this point could be made to the Coalition once discussions have started. She thought EPA may agree to go ahead and designate everything which leaves the department and commission in the exact same position.

Commissioner Minton asked if Ms. Randles was saying to go ahead without putting the conditions of the time frame on the Class C streams or water bodies and include them in the rule. And, if staff have a year to work on the rule, the rule language can be worded however it works. The suit would be dropped and negotiations started. He asked if that was her point.

Ms. Randles replied yes and if this gets them to the table to discuss it and if they are being unreasonable and if they or EPA threaten to go ahead with promulgating anyway then at that point the rule could be withdrawn. That decision could be made at that time. This has just created an opportunity to work out some alternate scenario.

Commissioner Kelly agreed this needed to be done to get them to the table. She thought they needed to give enough to make some kind of compromise possible.

Commissioner Herrmann said EPA needs guidance from the commission to take to the meeting next Thursday. This is a negotiating point.

Ms. Shannon stated that staff needed to move forward with the rulemaking. She said the language is needed right away to start the process.

Commissioner Herrmann asked if this was if the commission was going to adhere to the time frame.

Ms. Shannon said that was right.

Commissioner Kelly asked if Commissioner Minton could state it again.

Commissioner Minton appreciated the confidence but was trying to sort out all the thoughts.

Mr. Hull stated discussions have been held on what might satisfy the Coalition and negotiating with EPA on this particular issue and thought this to be the best way to handle it. He indicated that the commission needed to keep in mind the political realities of the impact of implementing this direction.

Commissioner Minton stated he was still working on language but asked for a motion.

Ms. Randles summarized that staff would propose a rule in July 2004 to immediately designate all classified waters upon the effective date of the rule, which would be expected to be January 2005, and simultaneously in the proposed rule to include proposed procedures for parties to conduct a Use Attainability Analysis.

Commissioner Greene said that sounds good.

Commissioner Minton agreed with the exception of the point that Chairman Herrmann has made.

Commissioner Herrmann still resisted by definition of a Class C stream, in that people can swim in some little stream where there is no water for 364 days out of the year, and nobody swims in it, so why designate that as a fishable and swimmable stream. He felt like he was being blackmailed.

Commissioner Minton responded that this is just for a worst case scenario discussion to prevent the lawsuit from going forward. In the rulemaking, comments can be reviewed from both sides of the issue during the public hearing process, then the rule can be revised, modified, or withdrawn. The commission is not saying, today all the streams of the state will be classified as swimmable and fishable Whole Body Contact streams. Today, the commission is just proposing a rule that would designate that. That position can be recanted in July or whenever the public comments start coming. The strategy is to start negotiations to resolve and iron out all the issues brought up.

Commissioner Herrmann said if they agree to this time frame.

Commissioner Minton said that was right and if not, then the commission would lose anyway. He asked if that was acceptable to all commissioners.

Ms. Randles mentioned that Wetlands should not be included.

Ms. Shannon replied that there aren't any classified Wetlands, so it's a moot point.

Commissioner Minton stated that issue number 1 was completed but there are the issues of Antidegradation, Wetlands and High Flow to discuss. He suggested the commission vote on the Whole Body Contact issue before moving to the next issue.

Mr. Hull asked if Commissioner Perry should be called if they were ready to vote on this issue. He said there is a quorum without her.

Commissioner Herrmann said no need to call if there is a quorum.

Mr. Hull said they would try to get her on the phone.

Commissioner Herrmann asked for a motion

Commissioner Minton asked if someone had language written.

Ms. Randles had written down, proposed rule in July 2004 to immediately designate all classified waters upon the effective date of the final rule and at the same time in that same rulemaking include a UAA process.

Ms. Shannon asked if it should say to include a UAA process in the rule.

Ms. Randles said, yes, to include a UAA, and asked if that was what Ms. Shannon spoke of earlier.

Ms. Shannon replied no, the UAA is outside of the rule and it's the process used then to make rule recommendations the next time. She said based on what Ms. Randles read, she would expect to immediately designate all classified waters but that staff would also develop a UAA Process.

Commissioner Minton asked Ms. Randles to please read it again.

Ms. Randles said the commission would be proposing a new rule to immediately designate all classified waters of the state upon the effective date of the rule and would also direct staff, outside of the proposed rule, to develop a UAA process.

Commissioner Minton said that was right but the commission is proposing a rule to Whole Body for all of these but was not classifying all of them today.

Ms. Randles said it would take effect upon the final date of any rule.

Commissioner Herrmann suggested saying 'all waters classified in 10 CSR 20-7.031, Tables G and H' instead of just all classified waters.

Commissioner Minton accepted that suggestion.

Motion moved by Commissioner Minton, **to immediately designate all waters classified in 10 CSR 20-7.031 Tables G & H upon the effective date of the rule, which is expected to be published as a proposed rule in July 2004. Direct staff to determine compliance procedures and timeliness for those affected by rulemaking.** Seconded by Commissioner Kelly and unanimously passed.

Commissioner Herrmann suggested discussing the Wetlands issue next.

Ms. Shannon stated the options are to do nothing or to make the changes that EPA has suggested in their September 2000 letter.

Commissioner Minton asked if this would also be done by promulgation by rule.

Ms. Shannon said that was right.

Commissioner Minton stated that if the public comment doesn't agree with that then the commission can always rescind that position.

Ms. Shannon said that was right.

Commissioner Minton had no issue with that.

Commissioner Herrmann asked if the commission was changing to EPA's recommendation.

Commissioner Minton said that is right.

Commissioner Herrmann asked for any other comments.

Mr. Hull stated that was fine with staff.

Commissioner Easley **moved the motion to change the current rule to include recommendations by EPA in their September 8, 2000, letter and include revisions in the proposed rule package to be published in July 2004.** Motion seconded by Commissioner Greene and unanimously passed.

Commissioner Minton suggested discussing High-Flow Exemption next.

Ms. Shannon stated that staff had two options to make as recommendations. One is to simply eliminate the high-flow exemption that is in the rule; the second option would be to establish a quantitative number associated with that. The 25-year, 24-hour has been discussed unless there is a better number that is agreeable to EPA.

Commissioner Minton asked if they had to designate what the quantitative limits would be or could they say that they want to promulgate by rule a quantitative limit associated with High Flow.

Ms. Shannon thought it could be just general.

Commissioner Minton **moved to establish a quantitative limit for the high-flow exemption, with staff determining the appropriate value and include revisions in the proposed rule package to be published in July 2004.** Seconded by Commissioner Greene and unanimously passed.

Ms. Shannon said that Commissioner Minton was right in thinking that all issues would be included in the same package and go through on the same date.

Ms. Shannon said the next issue is Mixing Zones on streams less than .1 cubic feet per second. These are on the streams with very low flow and staff had suggested that this mixing zone allowance this could be removed but there could be some impacts that they had not yet investigated.

Ms. Randles stated that Mixing Zone is not on the list of high priority issues for the Coalition.

Commissioner Herrmann asked if it should be set aside.

Ms. Shannon said it would be one more thing that could easily be resolved to scratch off their list.

Ms. Randles said it might be good to include it in case it becomes important to the Coalition in settlement negotiations.

Ms. Shannon said it is one of the claims in the lawsuit that the mixing zone provision for .1 CFS streams or less should be removed.

Commissioner Easley asked if that was a staff recommendation.

Mr. Hull said staff was not setting forth a recommendation because the impact has not been determined. He thought this would again be a proposed rulemaking. He didn't know how many facilities would be effected.

Commissioner Minton asked if this would be another that could be eliminated from the rule before it actually gets finalized.

Ms. Shannon said the provision is in the rule right now and EPA has suggested removing it from the rule. If no action is taken and it is left in the rule, there won't be any opportunity for public comment. But, if it's proposed for removal, then there would be opportunity for public comment and the commission could put it back in if they wanted.

Ms. Randles said in other words, if this proposed elimination of the mixing zone is not included, nobody will comment and the commission won't be able to address it in this rulemaking; but, if a

change to that rule is included, comments may be received and then in response to comments the commission may want to reconsider their action.

Commissioner Minton asked if staff could make the comments on that.

Ms. Shannon replied that was right.

Commissioner Minton asked if anyone saw a problem with including eliminating the Mixing Zones as part of the proposed rule. (No response.)

Commissioner Minton **moved to make a motion to remove the allowance for Mixing Zones on Class C streams with a 7Q10 of less than 0.1 cfs and include revisions in the proposed rule package to be published in July 2004.** Motion seconded by Commissioner Greene and unanimously passed.

Commissioner Herrmann said the next topic is Antidegradation.

Ms. Shannon said another item that could be quickly addressed is a separate Coalition claim. She thought that the action just taken gave staff direction but wanted to mention that the Coalition had a separate claim saying that unclassified water should also have Whole Body Contact protection. She said there was no need for commission action unless they wanted to. If not, that leaves the Antidegradation Implementation Procedures.

Commissioner Greene asked if this was what they had talked about doing by procedure and not by rule.

Ms. Randles thought a proposed rule change could be included to say that staff shall develop implementation procedures, which shall be incorporated by reference into this rule. She felt that would elicit comments from the public. She thought language could be included directly in the rule or even have a specific reference in the rule that incorporates by reference the implementation procedures. This would leave the opportunity open to address it in this upcoming rulemaking.

Commissioner Minton mentioned hearing at the last commission meeting that Antidegradation was a major issue for EPA. He felt it needed to be addressed in the rulemaking procedure and would be remiss if it wasn't included for public comment.

Commissioner Herrmann and Commissioner Minton asked Ms. Randles to restate the suggested language.

Ms. Randles said she was talking about a proposal to modify the rule to say that staff will develop implementation procedures in a manual or something like that and that that will be incorporated by reference into the rule.

Commissioner Minton asked if that would open up the whole rule.

Ms. Shannon stated that anything incorporated by reference must be provided in the rulemaking package. She felt generic language would be appropriate.

Ms. Randles suggested the language, Staff shall develop procedures.

Ms. Shannon asked, for the commission's benefit, if they could just direct staff in a general sense to include some language that references some implementation procedures but not establish the specific language. Given that the implementation procedures don't exist yet, that would satisfy the secretary of state requirements.

Ms. Randles said that there would be some change to the current rule language that refers to a direction to staff to develop implementation procedures so that issue is in the rulemaking and can be revised during the rulemaking process. She then asked if everybody understood.

Ms. Randles suggested the language, revise the rule to direct staff to develop Antidegradation Implementation Procedures.

Commissioner Herrmann asked for a motion.

Commissioner Minton **moved to revise the rule to signify that staff will develop an antidegradation implementation procedure and include some reference to this in the proposed rule package to be published in July 2004.** Motion Seconded by Commissioner Easley; and unanimously passed.

Project Bypass and Possible Kansas City Increase Request

(Commissioner Greene needed to go to another meeting.)

Ann Crawford, Acting Chief of the Water Protection Program's Financial Services Section, reported that the City of Kansas City has asked to be put on the fundable list for ten million dollars. They are the first one on the contingency list for a project. The project plans and specs have already been submitted and approved. In order to put them on the fundable list, Commission action is needed to by-pass two entities that are on the fundable carry over list, Jefferson County Public Sewer District and the City of Liberty. Neither of the two have submitted any plans and specs nor did they apply to be on the fiscal year 2005 intended use plan.

This would allow funding the Kansas City project. The City of Kansas City would like to do this loan closing within six weeks therefore commission action is needed now.

Commissioner Easley asked if staff could get some kind of a waiver from the other two entities.

Ms. Crawford stated they don't have a waiver but there is the lack of an application. They understand they will be by-passed unless they could get a project going within three months. They have been sent letters.

Commissioner Herrmann and Commissioner Easley approved if the entities have been notified and haven't objected.

Commissioner Easley **made the motion that to accept staffs recommendation.** Motion seconded by Commission Kelly; and unanimously passed.

Admitting Dura Automotive and Missouri Water into the Missouri Environmental Management Partnership Program

Mr. Hull reminded the commission that this was discussed at the last commission meeting. The department would like direction back from the commission on whether or not it should admit these companies into its Missouri Environmental Management Partnership program process. Information was provided so the commission could be thinking about a recommendation that could be given at this meeting.

Jim Penfold, Director of the department's Environmental Assistance Office, gave an outline on the process and information about the two applicants. The department is encouraging organizations to implement Environmental Management Systems. This is done through the Missouri Environmental Management Partnership. The first two applicants, Dura Automotive of Brookfield and Missouri American Water Company, the St. Joseph Treatment System Treatment Plant, have applied and have gone through a fairly extensive internal review process through a steering committee composed of Environmental Quality and Geologic Resources staff. Compliance checks through the regional offices have been done and are therefore recommending that Dura Automotive and Missouri American be accepted as the first two members of this Missouri Environmental Management Partnership. Part of the review process includes presenting this information to the policy commissions that are involved which included the Air Conservation Commission, Hazardous Waste Commission, Clean Water Commission and the Safe Drinking Water Commission. Concurrence has been received from both Air Conservation and Hazardous Waste Commissions. This is being presenting in a public setting to allow an opportunity for discussion and to ask for the commissioner's concurrence to admit these two facilities into this new program.

Commissioner Herrmann asked for a motion.

Commissioner Easley **moved to include the Dura Automotive and Missouri Water into the Missouri Environmental Management Partnership program.** Motion seconded by Commissioner Greene; and unanimously passed.

Water Pollution Control Program/Public Drinking Water Program Reorganization

Mr. Hull reported that this has been a topic that has occupied a lot of his time over the last several months. He mentioned that he had an opportunity to discuss previously with Chairman Herrman and Commissioner Minton. He reported that effective January 1, 2004, the Public Drinking Water Program and the Water Pollution Control Program were combined into one program. That new program will be called the Water Protection Program. The Water Protection Program will have two major branches, Water Pollution Branch and the Drinking Water Branch.

A new entity called the Water Protection Financial Assistance Center will be created. All of the activities related to the SRF, Rural Water, Sewer Grants and Loans, and Stormwater Grants will be combined in the Water Protection Financial Assistance Center. The Center will also include the SRF engineering staff from both Public Drinking Water and Water Pollution.

The Water Pollution Branch will have four sections. The NPDES Permits and Engineering Section will have Peter Goode as the section chief. The Water Quality Section will be split into two sections--Watershed Protection Section and Water Quality Monitoring and Assessment Section. Becky Shannon will be the section chief of the Watershed Protection Section and Phil Schroeder will be the section chief of the Water Quality Monitoring and Assessment Section. The Enforcement Section in the Water Pollution Branch will be renamed the Compliance and Enforcement Section, with Kevin Mohammadi as section chief, emphasizing that the department is in the business of obtaining compliance, not just taking Enforcement.

At a previous Clean Water Commission meeting, Mr. Hull had designated Mr. Mohammadi as Deputy Director for the Water Pollution Program. His title will be changed to Water Pollution Branch Chief and have responsibilities in this position in addition to his duties as the section chief of the Compliance and Enforcement Section.

The Drinking Water Branch will have three sections. Darrell Osterhoudt will be the section chief of the Drinking Water Monitoring Section. Breck Summerford will be the section chief of the Drinking Water Infrastructure Permits and Engineering Section. Bill Price will be the section chief of the Compliance and Enforcement Section. In addition to his duties as section chief of the Drinking Water Monitoring Section, Darrell Osterhoudt will be designated as the Drinking Water Branch Chief. They will assist with the everyday functions of both of the branches. Mr.

Hull realized it would be difficult to follow with having organizational charts. Mr. Hull was reminded those had been sent via fax.

Mr. Hull continued saying that the administrative functions of both branches have been combined into one Fiscal Management Unit with Grady Martin as Unit Chief. To summarize, there are two commissions, two branches and one financial center. Over the last few months a lot of discussion and a lot of thought went into this change. Mr. Hull commented that this is a major change in direction for the Water Pollution Program and the Public Drinking Water Program, now the Water Protection Program. The functions of each Branch will still be carried out as previously.

Commissioner Herrmann commented that he thought the commission was considerably short on knowledge and experience in engineering. He said that Breck Summerford has been in the water branch for a long time, but in the Water Pollution Branch there are only two people with no experience and both educated as chemical engineers. He felt it put them at a considerable disadvantage in discussions with industry, EPA and other people.

Mr. Hull expressed confidence in his staff. He said if they don't have the knowledge they will get up to speed fairly quickly. He mentioned that not having twenty years experience allows a different outlook sometimes.

Commissioner Herrmann commented that the experience is knowing the state's regulations, EPA's regulations and the 10 state standards.

Mr. Hull mentioned that the department experienced the loss of several people last year through retirement or new positions. This does leave a vacuum concerning historical knowledge but staff will just do their best.

Commissioner Herrmann noted that Senator Childers was again introducing legislation with Senate Bill 716 and asked Mr. Hull who of his staff would be making those kinds of evaluations.

Mr. Hull stated that Peter Goode would be working on that.

Mr. Hull asked if there were any other questions.

In answer to Mr. Hull's question, Commissioner Herrmann thought they had the organizational charts they needed.

Mr. Hull indicated that the organizational chart provided will not change.

He informed the commission that the Pebble Creek WasteWater Treatment Plant facility permit was issued Monday. This is the Nancy Brunson issue at Lake of the Ozarks. She has previously

addressed the commission. A report regarding some of the concerns not only from her but from other citizens of the Duncans Point Community was also given. Bruce Martin from the department's Southwest Regional Office (SWRO) also provided a report concerning the inspection that was preformed. The final permit was issued by the SWRO. Staff have been informed that there may be a lawsuit filed against the department for the issuance of the permit. The Attorney Generals Office is now getting a lot of calls from concerned citizens at this point. Ms. Brunson has asked do address both the Safe Drinking Water Commission and the Clean Water Commission at their next meetings.

Commissioner Herrmann noted that.

Other, Including General Public Comment, Discussions or Issues

Mr. Hull asked if all commissioners received a copy of the summary of EPA's final action regarding the 2002 303(d) List.

Commissioner Herrmann replied that he did but had problems accessing a specific enclosure and asked for a copy.

Mr. Hull replied that the document is about an inch and a half thick and that a copy could be forwarded. He asked if anyone else on the commission needed a complete copy of their final action.

Commissioner Kelly requested to receive one.

Commissioner Greene thought she would have access and didn't need one.

Commissioner Herrmann said that on November 25, 2002, Commissioner Perry, Commissioner Kelly and he went with Bill Bryan to look at some Innovative and Alternative Systems on the hog farms and hasn't heard back from anyone. His impression was that it was a bunch of college PhD professors who were enjoying a little play toy and was rather doubtful whether anything beneficial would ever come out of it. He has tried asking Bill Bryan but with no results.

Mr. Hull asked if this was the one where PSF was taking conducting a tour 2nd of the generation technology.

Commissioner Herrmann said that was it. He thought that Bill Bryan or Robert Brundage could make a presentation about what has taken place and what will come of this.

Mr. Hull said they could ask since the agenda for the next commission meeting has not yet been finalized.

Commissioner Herrmann wanted to see some results other than pH reported on a Parts Per Million basis.

Mr. Hull thanked all for an interesting and lengthy discussion and felt that progress was made on a number of issues with the direction given regarding how to communicate to EPA on how some of the items that are the subject of the lawsuit will be addressed. He sincerely hoped it would lead to a compromise plan on being able to address this and will forgo EPA having to go forward and do all. There will be impacts from some of these actions in the rulemaking.

Thank you.

Respectfully submitted,

Jim Hull
Director of Staff